AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 671.

EDWARD H. LITCHFIELD, ADMINISTRATOR OF GRACE H. LITCHFIELD, DECEASED, PLAINTIFF IN ERROR,

vs.

GEORGE CRANE, ADMINISTRATOR OF EDWARD K. GOODNOW, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

RECORD FILED SEPTEMBER 29, 1886.—AGREED RECORD FILED OCTOBER 5, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 6, 1887.

1 *Appeal from the Judgment of Webster District Court.*

In the Supreme Court of Iowa. December Term, 1884.

EDWARD K. GOODNOW, Appellee,

vs.

GRACE H. LITCHFIELD, EDWIN C. LITCHFIELD, Administrator, Substituted Appellant.

C. H. Gatch, for appellant; George Crane, for appellee.

Appellant's Abstract of Record.

July 26, A. D. 1880, the plaintiff filed his petition in equity in the circuit court of Webster county, Iowa, stating his cause of action as follows:

Paragraph 1. That on or about the 15th day of May, 1856, the Congress of the United States, by an act approved on that date, granted and conveyed to the State of Iowa, in trust to aid in the construction of a railroad from the city of Dubuque, on the Mississippi river, across said State to a point on the Missouri river, near Sioux City, every alternate section of land designated by odd numbers for six sections in width on each side of said road; and in case there was not enough land within said limits subject to said grant to make the full six sections of land for each mile of road to be constructed, then that said State should be entitled, within fifteen miles on either side of said railroad, to so much land in alternate sections or parts of sections as should be equal to the amount of land
2 in odd-numbered sections within the said six-mile limits as were not subject to the operation of said grant, and that to make a full grant of six sections per mile said State became entitled to and received a proper certificate for all the odd-numbered sections and parts of sections within the said fifteen-mile limits that had not been sold or otherwise appropriated by the United States and to which the rights of pre-emption had not attached.

Par. 2. Plaintiff further says that on or about the 14th day of July, 1856, the said State of Iowa having duly accepted said grant and undertaken the trust therein declared by an act approved on that date, granted all of said lands to the Dubuque & Pacific Railroad Company, a corporation duly organized under the laws of said State, on condition that said company would build the railroad contemplated in said act of Congress.

That afterwards, in August, 1860, the said Dubuque & Pacific Railroad Company sold, transferred, and conveyed its said railroad and all its property of every kind and nature, including all its right, title, and interest in and to its lands given or granted to it by said State of Iowa to aid in the construction of said railroad to the Dubuque & Sioux City Railroad Company, a corporation duly organized under the laws of Iowa, which said last conveyance was afterwards

recognized, approved, and assented to by the State of Iowa, a copy of which, marked Exhibit "A," is attached to this petition.

Par. 3. Plaintiff further says that said railroad companies duly constructed said railroad according to the terms and requirements of said act of Congress, and prior to the year 1861 earned all the lands designated or conveyed by the language of the granting clause of said act of Congress, and lying or being situated on the east side of the Des Moines river, in Webster county, Iowa.

Par. 4. Plaintiff further says that from 1860 to 1873 the said Dubuque & Sioux City Railroad Company, under and by virtue of said grant of land and the construction of said railroad, honestly and in good faith believed it was the absolute owner of and held a good and valid title during all the years of 1861 and 1862, and till the 12th day of November, 1863, to the following-described lands, to wit:

The S. h'f of section 1, 87, 29; the E. h'f of section 5, 88, 27; all of section 7; the W. h'f of section 15 and E. h'f of section 29, 88, 27; the N. W. q'r of the N. W. q'r of section 15, 88, 28; all of section 35, 88, 29; the E. h'f of the N. E. q'r and the E. h'f of the S. E. q'r of section 1, 88, 30; the W. h'f of the N. E., and S. E. q'r, and W. fr. h'f of section 19, 89, 27, Webster county, Iowa. All of which lands are designated by odd numbers, and are within the six and fifteen mile limits of said railroad, and without which said railroad grant did not amount to six sections per mile of railroad built.

But in the year 1873, the Supreme Court of the United States in a suit therein pending, for the purpose of testing the right and title of the Iowa Homestead Company, a grantee of the said Dubuque
3 & Pacific Railroad Company to the land aforesaid, decided finally that neither said railroad company nor said homestead company was the owner thereof and never had any right or title thereto, since which time neither of said companies has claimed to be the owner of said land or any part thereof.

Par. 5. That during the continuance of said belief and claim of ownership the said Dubuque & Sioux City Railroad Company paid to Webster county, a municipal corporation under the laws of Iowa, and within whose territorial limits said lands are situated, the taxes which were duly assessed and levied upon said lands by said county, that is to say, the amounts and at the dates following and for the following years respectively:

For 1861, paid October 31, 1866, $1,002.
For 1862, paid December 9, 1863, $495.18.
For 1863, paid January 20, 1864, $502.22.

Par. 6. Plaintiff further say that the taxes so assessed and levied upon said lands became, and were a valid and binding lien thereon in favor of said county, which said lien was superior or paramount to all other liens or incumbrances thereon.

Par. 7. Plaintiff further says that long prior to the assessment and levy of said taxes upon said lands the said defendant herein became and was the real owner thereof and ever since has been such owner, but, of defendant's said ownership said Dubuque & Sioux City Railroad Company had no knowledge or notice at the time of

constructing said railroad nor till long after the payment of the taxes aforesaid.

Par. 8. Plaintiff further says that said defendant has never paid to said county the taxes aforesaid or any part thereof and that said county has always hitherto refused and still refuses to refund to said last named railroad company or its assignors the taxes so paid to said county by said railroad company as hereinbefore alleged.

Par. 9. Plaintiff further says that said defendant is now and always has been a non-resident of the state of Iowa.

Par. 10. Plaintiff further says that the said Dubuque & Sioux City Railroad Company has assigned, transferred and set over to the said plaintiff all its right, title, and claim for all of said taxes and the right to recover or obtain the same from the said defendant, a copy of which assignment, marked Exhibit "B," is hereto attached and made part of this petition.

Par. 11. Wherefore plaintiff asks judgment against the defendant for the sum of six thousand dollars, interest and costs of suit, that the same be made a special lien on the lands above described, and for such other and further relief in the premises as equity and good conscience may require and to this court may seem meet.

4 On the 19th day of April, 1881, defendant filed her answer to the petition, setting up the following defenses:

1. She admits the passage by the Congress of the United States of an act, approved May 15, 1856, which purported to grant to the State of Iowa lands as and for the purpose in the first paragraph of said petition set forth; admits the passage of an act of the Legislature of the State of Iowa, approved July 14, 1856, purporting to grant

5 to the Dubuque & Pacific Railroad Company all of said lands in the first paragraph of the petition described, as and for the purpose and upon the condition in the second paragraph of the petition set forth; admits that in August, 1860, said Dubuque & Pacific Railroad Company executed to the Dubuque & Sioux City Railroad Company a conveyance, a copy of which is attached to the petition as Exhibit "A;" admits that in the year 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the right and title of the Iowa Homestead Company, a grantee of said Dubuque & Sioux City Railway Company to said lands, decided that neither said homestead company nor its grantor was, or at any time had been, the owner thereof or any part of the same; admits that this defendant has not paid said Webster county said alleged taxes in the petition mentioned or any part thereof; admits that he is and always has been a non-resident of the State of Iowa.

2. She denies each and every allegation in said petition contained and every part thereof not heretofore expressly admitted; and, further answering, says:

3. That during the years from 1860 to 1865, both inclusive, adverse claims of title were made to said lands, the taxes on which are in controversy herein, by the Des Moines Navigation & Railroad Company and its grantees, claiming the same under the act of Congress of August 8, 1846, known as "The Des Moines River Land

Grant," and the Dubuque & Pacific Railroad Company and its grantees claiming the same under the act of Congress of May 15, 1856, known as the "Railroad Grant," and that by reason of such adverse claims of title thereto the title was withheld by the General Government for the purpose of adjusting or determining with respect to said conflicting claims, and the certification thereof under said last-mentioned act was suspended until April, 1863, that the claim of title to said lands by plaintiff's assignor, and its grantors, therefore, did not have its inception until the last-mentioned date, and said lands could not have become subject to taxation under said last-mentioned act and their certification thereunder, had they been held to pass under the gaant thereby made. Wherefore defendant says the payment of the taxes thereon for said years was both voluntary and officious.

4. That if any cause of action ever accrued to plaintiff's assignor, the said Dubuque & Pacific Railroad Company, against this defendant for the recovery of any of said taxes or any sum of money on account thereof, for any of said years, the same did not accrue at any time within five years next preceding the commencement of this action, and is, therefore, barred by the statute of limitations of the State of Iowa.

5. That ever since the year 1860 this defendant has been a citizen and resident of the State of New York, and if any cause of action ever accrued to plaintiff or his assignor against defendant, for the recovery of any of said alleged taxes or any sum of money on account thereof, for any of said years, the same did not accrue at any time within six years next preceding the commencement of this action, and is, therefore, barred by the statute of limitations of the State of New York.

6 6. That the title to all of said lands was fully and absolutely in the United States until the 2d day of March, 1861, and, therefore, could not have been and was not subject to taxation prior to that time.

7. That said lands did not become subject to taxation under either of said conflicting grants or otherwise until after the year 1863, by reason whereof the pretended taxes paid by plaintiff's assignor were illegal, and, therefore, are not recoverable from this defendant.

8. That subsequent to the payment by it of the taxes on said lands, as in the petition alleged, and before its alleged assignment of the alleged cause of action herein to plaintiff, said Dubuque & Sioux City Railroad Company conveyed all of its right, title, and interest in said lands by warranty deed, containing among other covenants a covenant against incumbrances to said Iowa Homestead Company, whereby it assigned all right and claim that it then had to or on account of said taxes to said homestead company, and plaintiff, as its assignee, is estopped from claiming the same.

9. That on the — day of ——, 1863, plaintiff assignor, the Dubuque & Sioux City Railroad Company conveyed all of said lands by deed of general warranty, containing covenants, among other things, against incumbrances, to the Iowa Homestead Company, a corporation created and existing under and by virtue of the laws of

the State of Iowa; and that, in an action in which the said homestead company was plaintiff and this defendant and others were defendants, commenced in the district court in and for the county of Webster and State of Iowa, and finally determined in and by the Supreme Court of the United States, the said homestead company asserted and maintained the right of recovery of this defendant of the same taxes, the recovery of which was sought herein and other taxes, the alleged right of recovery of which was based up n the same title and state of facts and involved the same questions of fact and law. That one of the issues made by the pleadings and determined by the proofs in said action was as to the right of said homestead company to recover said taxes, and that it was therein determined and adjudged finally by said last-named court, at the December term thereof, A. D. 1872, that the said homestead company was not entitled to recover the same or any part thereof; which said determination and judgment has never been in any manner set aside, vacated, or modified, and still remains in full force; that plaintiff's assignor had notice and full knowledge of the commencement and pendency of said action, and permitted and authorized the taxes on account of which recovery is sought herein, to be sued for in that action in the name of said homestead company for the use of plaintiff's said assignor.

7 On the 15th of June, 1881, the plaintiff filed the following reply to defendant's answer.

As to the 3d paragraph thereof he admits the same to be true from the beginning to the words "known as the railroad grant," and as to the rest of said paragraph he denies the same and each allegation thereof.

As to the 4th, 5th, 6th, 7th, and 9th paragraphs of said answer he denies each and every part thereof.

As to the 8th paragraph he admits that the Dubuque & Sioux City Railroad Company conveyed all of its right, title, and interest in said lands by warranty deed, containing, among other covenants, a covenant against incumbrances to said Iowa Homestead Company, but as to all the rest of said paragraph he denies the same and asks relief as heretofore prayed.

And on the 28th day of January, 1882, filed the following amendment to his petition:

And now comes the plaintiff, Edward K. Goodnow, and, by leave of court first had and obtained, for amendment and addition to his first petition heretofore filed in this case says that the defendant, Grace H. Litchfield, died in the month of October, A. D. 1881, leaving her surviving, Edwin C. Litchfield, her husband; also Frances Turnbull, wife of Lawrence Turnbull; Edward H. Litchfield and his wife; Madeline S. Litchfield, Henry C. Litchfield, and Grace D. Litchfield, her children and only heirs-at-law; that each and all of the persons above named claim to have some estate or interest in the lands mentioned in the original petition in this suit.

Plaintiff avers that if they have any estate or interest in said lands it is inferior and subordinate to the rights of plaintiff therein. Where-

fore plaintiff asks that said Edwin C. Litchfield, Frances
8 Turnbull, Lawrence Turnbull, Edward H. Litchfield, Madeline S. Litchfield, Henry C Litchfield, and Grace D. Litchfield, be made defendants to this suit. That each and all of them be forever barred and foreclosed of all right and equity of redemption in the said lands and every part thereof, and that plaintiff have such other and further relief against said parties as may be just and equitable.

9 And on the 18th day of March, 1884, defendants, F. L. Turnbull and others, filed the following answer to plaintiff's petition and the amendments thereto:

Comes now the defendants, Frances L. Turnbull, wife of Lawrence Turnbull; Edward H. Litchfield and his wife, Madeline
10 S. Litchfield; Henry P. Litchfield and Grace D. Litchfield, children and heirs, and Edwin C. Litchfield, administrator of said Grace H. Litchfield, who since the commencement of this suit and filing answer herein has departed this life, and answer the petition of plaintiff filed July 26, 1880, and the amendments thereto filed January 28, 1882, and February 21, 1884. And for answer to said original petition, adopt the answer of said Grace H. Litchfield, filed herein April 19, 1881, and for answer to said amendment filed January 28, 1882, admit the same except the averment that the estate and interest of these defendants, in the real estate, in the original petition described, is inferior and subordinate to the alleged claim and rights of plaintiff, which averment they deny: and for answer to said amendment filed February 21, 1884, in addition to the plea of the statute of limitations, as contained in the said answer of said Grace H. Litchfield, and hereinbefore adopted; they say that plaintiff, by his amendment to his petition herein filed June 15, 1881, dismissed his suit and claim as to the claim made in his said original petition for and on account of the taxes for the year 1861; that as to the claim now by his said last named amendment made the filing of said amendment, is the commencement of a new suit.

That ever since the year 1860 until her decease in the year 1881, said Grace H. Litchfield was a citizen and resident of the State of New York, that all of these defendants are and for the ten years last past, have been citizens and residents of said State of New York, except the defendant Frances L. Turnbull, who during said last mentioned period, has been and still is a citizen and resident of the State of Maryland, and that if any cause of action ever accrued to plaintiff or his assignor against said Grace H. Litchfield, or these defendants, or any of them, for the recovery of said alleged taxes for said year 1861, or any recovery on account thereof, the same did not accrue at any time within six years next preceding the filing of said last mentioned amendment; and is, therefore, barred by the statute of limitations of the State of New York.

On the 4th day of March, 1884, this cause coming on for hearing, plaintiff, to maintain the issue on his part, offered and read in evidence the following:

1. *Agreement.*

STATE OF IOWA, } ss:
County of Webster, }

In the Circuit Court of said Webster County, Iowa.

EDWARD K. GOODNOW *vs.* GRACE H. LITCHFIELD.

It is hereby stipulated and agreed that the plaintiff in the above-entitled suit may read in evidence at the trial of said suit the second, third, and fourth sections or paragraphs on pages 26 and
11 27 of the printed abstracts in the case of Edward K. Goodnow *vs.* Edwin C. Litchfield in the supreme court of Iowa, October term, 1880, as being true of and applicable to the lands mentioned and described in the said petitions in said above-entitled suits, the last line in the third paragraph being changed so as to read "said company, prior to the year 1861, conveyed to the said several defendants, respectively, the lands mentioned and described in each petition in said several above-entitled suits," and the first line in the fourth paragraph so as to read "said several defendants and their said grantors."

It is further agreed that the plaintiff may read in evidence at the trial of the above-entitled suit certified or sworn copies by the treasurer of Webster county from the books, records, or official papers in his office relative to the payment of taxes on any of the said lands mentioned in the petition in said suit for the years from 1861 to 1871, both inclusive, or any of them.

BARCROFT, GATCH & McCAUGHAN,
Attorneys for Defendant.

The following are paragraphs second, third, and fourth, referred to in above argument, as changed:

Second. All of said lands lie within five miles of the Des Moines river, in the alternate odd-numbered sections above the Raccoon forks of said river, and were, prior to May 3, 1858, certified and approved to the State of Iowa under the act of Congress of August 8, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river, in said Territory."

Third. On the 3d day of May, 1858, pursuant to a sale thereof previously made, and an act of the General Assembly of Iowa, passed March 22, 1858, entitled "An act disposing of the grant of land made by an act of Congress granting land to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river, and a joint resolution of said General Assembly, adopted on the day and year last aforesaid, entitled "Joint resolution containing proposition for a settlement with the Des Moines Navigation & Railroad Company," the State of Iowa, by its deed or patents granted and conveyed of all of said lands to the Des Moines Navigation & Railroad Company, a corporation duly organized, created, and es-

tablished under the laws of the State of Iowa, and subsequently thereto and prior to the commencement of this suit said company, prior to the year 1861, conveyed to the said several defendants, respectively, the lands mentioned and described in each petition in said several above-entitled suits.

Fourth. Said several defendants and their said grantors prior to March 2, 1861, claimed title in fee simple to all of said lands under said act of Congress of August 8, 1846, and the certification, approval, and conveyance aforesaid thereunder and constantly since March 2, 1861, has claimed title to said lands under the joint
12 resolution of Congress of that date and the act of Congress of July 12, 1862, and prior to December, 1858, the same were considered and treated by the agents and officers of the United States and the State of Iowa as having passed to said State under and by virtue of said act of Congress of August 8, 1846.

2. Abstract of taxes, certificate of treasurer showing the levy and assessment and the payment by the plaintiff's assignor, the Dubuque & Sioux City Railroad Company, of the following amounts of taxes on the lands described in plaintiff's petition for the years 1861–2–3, respectively:

For 1861, paid October 31, 1886, $1,020.94; for 1862, paid December 9, 1863, $367.18; for 1863, paid January 20, 1864, $364.47.

13 *Decree.*

EDWARD K. GOODNOW
vs.
GRACE H. LITCHFIELD and EDWIN C. LITCHFIELD, Administrator, Substituted.

This cause coming for final hearing, the 4th day of March, 1884, the plaintiff appearing by his attorney, and the defendant appearing by his attorney, C. H. Gatch, was duly submitted to the court upon the pleadings, evidence, and arguments of counsel, and the court desiring to take cause under advisement, it was ordered, with consent of the parties to the suit, that the decision of the court be rendered in vacation, and that the decree of the court be entered as of the 4th day of March, 1884.

And the court, having duly considered the pleadings, evidence, and arguments of counsel, finds the issues in favor of the plaintiff, and further finds that said plaintiff is entitled to recover the sums of money paid by plaintiff's assignor and interest thereon from the times said payments were made.

The court also finds and decides that the plaintiff is entitled to a lien on the lands on which said taxes were paid.

It is therefore ordered, adjudged, and decreed that said Edward K. Goodnow, plaintiff, have and recover of and from Edwin C. Litchfield, administrator of Grace H. Litchfield, deceased, the defendant, the sum of $1,752.59 and interest thereon at six per cent. per annum from the 4th day of March, 1884, and costs of suit, taxed at —— dollars, and that said claim or decree be, and and is hereby, made

a special lien on the lands described in plaintiff's petition, to
14 wit, from the 28th day of April, 1873; that plaintiff have special execution, and that said lands be sold thereunder according to law.

Notices of appeal were served on the clerk of said court September 2, 1884, and on Geo. Crane, plaintiff's attorney, September 1, 1884.

Assignment of Errors.

1. The court erred in overruling the demurrer of defendant to plaintiff's petition.

2. The court erred in overruling the motion of defendant asking for a more specific statement in plaintiff's petition as to the character in which he sued.

3. The court erred in disallowing defendant's petition for removal to the United States circuit court and refusing to grant an order for such removal.

4. The court erred in sustaining plaintiff's motion for change of venue to the district court.

5. The court erred in holding and deciding on the final submission that plaintiff had such interest or relation to the cause of action sued on as entitled him to maintain suit in his name.

6. The court erred in holding and deciding on the final submission that the lands described in plaintiff's petition were subject to taxation for any of the years 1861, '2, '3.

7. The court erred in holding and deciding on the final submission that the plaintiff's claim was not barred by the statute of limitations of the State of the New York.

8. The court erred in holding and deciding on the final submission that plaintiff was not estopped from prosecuting this suit by the former adjudication in the said former suit of The Iowa Homestead Company *vs.* The Des Moines Navigation & Railroad Company *et al.* and others.

15 9. The court erred in holding and deciding on the final submission that plaintiff was entitled to a lien on the several parcels of land in the petition described for the amounts of taxes paid thereon, respectively.

10. The court erred in holding and deciding on the final submission that plaintiff was entitled to interest on the several payments of taxes made by his assignor from the dates of payments thereof, respectively.

11. The court erred in holding that the payment of the taxes was not a voluntary payment.

12. The court erred in allowing interest without any proof of demand prior to bringing of suit.

13. The court erred in rendering any decree and not dismissing the bill.

C. H. GATCH,
Attorney for Appellant.

16 *Opinion of the Supreme Court of Iowa.*

GOODNOW *v.* LITCHFIELD. (Two cases.)

Appeal from Webster district court.

TUESDAY, *December* 15, 1885.

These cases involve claims for reimbursement for the taxes paid upon certain lands in Webster county. There were judgments for the plaintiff and the defendants appeal.

C. H. Gatch, for appellants; George Crane, for appellee.

ROTHROCK, *J.*:

I. The questions in these cases are substantially the same and require but one opinion for their determination. They are in many respects similar to cases already determined by this court involving the right to recover for taxes paid on what is known as the Des Moines river lands. The whole controversy is just this: The lands above what is known as the "Raccoon Fork of the Des Moines river" were for a long time in controversy between what is known as the "river grant" and the "railroad grant." The claimants under the river grant finally recovered the lands. Pending the various contests as to the title to the lands, the claimants under the railroad grant paid large sums of money in the discharge of taxes upon the lands. They claim that, inasmuch as the claimants under the river grant succeeded in obtaining the lands, they ought to pay the taxes thereon; or, what is the same thing, they onght to reimburse the claimants under the railroad grant for what they have paid. This court has been of that opinion, and in many cases which we have determined arising out of these matters we have determined

17 that the taxes were not officiously paid by the plaintiffs or their assignors, but that the payments were made in good faith and ought to be repaid, with six per cent. per annum interest from the time of the respective payments. The payments in these cases are for taxes for the years 1861, 1862, and 1863. It is urged that the lands were not taxable for the year 1861. We had occasion to examine this question in the case of Goodnow *v.* Wells, *ante*, p. 654, decided at the present term, and we there held that the lands were taxable for that year, and with that decision we are content.

II. The defendant moved to require the plaintiff to make his petitions more specific, and the motions were overruled. The petitions show that the plaintiff sues as the assignee of the Dubuque & Sioux City Railroad Company. The assignment was in writing, and the same is exhibited with the petitions and made part thereof. It plainly appears from the petition that the plaintiff sued as trustee of an express trust, and he was specially authorized to bring and maintain suits in his own name to recover the taxes in question. We think the petitions were sufficiently specific.

III. The defendants filed petitions for the removal of the causes to the circuit court of the United States. They alleged that they were citizens of the State of New York, and "that the plaintiff,

Goodnow, is only a nominal party to the suits, and has no interest therein whatsoever, but is prosecuting the same for the sole and exclusive use and benefit of the Dubuque & Sioux City Railroad Company, which was at the commencement of the suits and still is a corporation under and by virtue of the laws of the State of Iowa and having its principal place of business in said State of
18 Iowa, which said railroad company directed the commencement of said suit, employed counsel to prosecute the same, and are directing and controlling the prosecution." The petition for removal was disallowed, and the defendants excepted and assign the ruling as error.

If the petition had been entertained by the court and the removal ordered it would have been upon the ground that the controversy was really between citizens of different States—that is, that it was an action between the Dubuque & Sioux City Railroad Company, of the State of Iowa, and of the defendant, a citizen of the State of New York; but the assignment to the plaintiff invested him with the title to the claim or cause of action, and authorized him to prosecute it by suit. We have recently decided that in such case a party has no right to a removal of the cause to the Federal court. See Vimont *v.* Chicago & N. W. R'y Co., 64 Iowa, 513.

IV. The venue of the actions was changed from the circuit court to the district court of Webster county on the application of the plaintiff. The defendants insist that the showing made for the change of venue was insufficient. The affidavit of the plaintiff in support of the motion to change the venue was as follows:

"STATE IOWA, *County of Webster:*

"In the Circuit Court of said County.

"EDWARD K. GOODNOW *v.* GRACE H. LITCHFIELD.

"I, Edward K. Goodnow, being first duly sworn, depose and say that I am the plaintiff in the above-entitled action; that
19 M. D. Miracle, judge of this court is, to the best of my knowledge and belief, so prejudiced against me that I cannot obtain a fair trial before him, and that the existence of such prejudice was not known to me prior to the last continuance of this action.

"EDWARD K. GOODNOW.

"STATE OF NEW YORK, *County of New York:*

"I, A. C. Vaughan, a notary public in and for the county and State of New York, do hereby certify that the foregoing affidavit was sworn to before me and subscribed in my presence by said Edward K. Goodnow this eighth day of May, A. D. 1882.

"Witness my hand and seal.

[Seal Arthur C. Vaughan, Notary Public, Kings County, New York County.]

"A. C. VAUGHAN,

"*Notary Public, Kings County.*

"C't'f. filed in New York county."

It is objected that the affidavit was not authenticated, as required by the law, because the name of the State was not impressed on the seal of the notary public, and the case of Stevens *v.* Williams, 46 Iowa, 540, is relied upon as decisive of the question. In that case a notary public of Michigan affixed as a seal to a certificate to depositions a wafer, with his name and the name of the county written with a pen, and there was no impression on the paper or wafer. It was held that, as no proof was introduced that the laws of Michigan were different from our own, the authentication was not sufficient.

20 No objection is urged in argument as to the sufficiency of the seal, excepting that the name of the State is not engraved thereon. This is required by the laws of this State, and while it is true the laws of other States are presumed to be the same as our own, unless the contrary is shown, yet we think it is fair to presume that some showing was made in the court below that by the laws of New York the name of the State was not required to be engraved on the seal. Levy *v.* Wilson, 43 Iowa, 605. We think this should be presumed in this case, because it does not appear affirmatively that this specific question was raised in the court below. The only objection made to the change of venue was a general exception to the order making the same. It is said that no presumption can be entertained that any evidence was introduced, because it appears from the abstract that all of the evidence introduced in the court below is contained in the abstract. We think this has reference to the evidence taken upon the trial of the case in the district court and not to the preliminary proceedings in the circuit court. It is further objected that the supporting affidavit for a change was not properly authenticated, because in its caption it is entitled "State of Iowa, county of Webster," and it appears to have been sworn to before a notary public in Dubuque county, in this State. The presumption is that the notary public took the affidavit in his own jurisdiction, and the caption does not show that it was sworn to in Webster county.

21 V. There is no other question in these cases except such as have been already determined by this court. We need not cite them. The most of them are cited in Goodnow *v* Wells, *ante*, p. 654, at the present term.

Affirmed.

22 *Judgment of the Supreme Court of Iowa. December* 15, 1885.

"EDWARD K. GOODNOW

vs.

GRACE. H. LITCHFIELD, E. H. LITCHFIELD, Adm'r, App'l'ts.

Appeal from Webster dist. court.

In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the

court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellants pay the costs of this appeal, taxed at $19.75, and that execution issue therefor."

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and complete copy of the final judgment entry of said court in the above-entitled cause, as full, true, and complete as the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 13th day of Sept., A. D. 1887.

[Seal of the Supreme Court of Iowa.]

G. B. PRAY, *Clerk.*

Transcript fee, —.

23 *Supplemental Decree or Certificate.*

EDWARD K. GOODNOW, Appellee,

vs.

EDWARD H. LITCHFIELD, Adm'r *de bonis* of the Estate of Grace H. Litchfield, Deceased, Substituted as Defendant and Appellant in place of Edwin C. Litchfield, Deceased, who was heretofore Substituted for Grace H. Litchfield herein as her Adm'r.

And now, on the application of said defendant, it is certified by the court here, and ordered to be made part of the record herein, that by the answer of the defendant and in defendant's assignment of errors and on the hearing in said cause the defendant claimed immunity from the entire demand and claim of plaintiff on the ground that, as he claimed, the same demand and claim had been adjudicated against plaintiff's assignor, the Iowa Homestead Company, by the Supreme Court of the United States in the case of the Iowa Homestead Company *vs.* The Des Moines Navigation & Railroad Company, and this defendant's testator, Edwin C. Litchfield, and others, at the October term thereof, A. D. 1872, and that our decision herein was and is against the immunity so claimed by the defendant herein.

And it is further certified and ordered to be made part of the record herein that by defendant's answer and on the hearing of said cause defendant claimed immunity from said entire claim and demand, because, as was claimed and alleged, the alleged cause of action not having accrued within six years preceding the commencement of this action was barred by the statute of limitations of the New York, and that, to determine whether or not it was so

24 barred, it became material and necessary to decide whether or not the decision of the Supreme Court of the United States in the case of Samuel G. Wolcott *vs.* The Des Moines Navigation & Railroad Company, reported in 5 Howard, 681, was a final determination of the question of title therein decided in order to determine when the plaintiff's cause of action accrued, and that our

decision herein was and is that said decision was not a final determination of said question, and was and is against the immunity so claimed because of said decision that said determination was not final.

And it is further certified and ordered to be made part of the record herein that $2,522.71 of the amount herein found and adjudged to be due from the defendant to plaintiff was so found and adjudged as and for that amount paid by plaintiff's assignor as and for taxes for the year 1861 on the lands in the petition described; that said lands are part of the so-called "Des Moines river lands," granted by the United States to the State of Iowa by act of Congress of August 8, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines river, in said Territory," the joint resolution of Congress of March 2, 1861, entitled "A joint resolution to quiet title to lands in the State of Iowa," and the act of Congress of July 12, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes," and that all of said lands are located above the Raccoon Fork of the Des Moines river; that the validity of said taxes and the levy thereof for the year 1861 was drawn in question herein by the defendant on the ground, as maintained by defendant, that the lands were public lands of the United States, at least until March 2, 1861; and, if so, were not under the law of Iowa taxable until the year 1862; and this court decided herein that said lands were subject to taxation by the State of Iowa for the year 1861, and that said sum of $2,522.71 was recoverable of defendant by plaintiff because the same were so subject to taxation for that year.

And it is further certified and ordered to be made part of the record herein that the defendant on the hearing hereof claimed immunity from the demand and claim of plaintiff to the amount of said $2,522.71, on the ground that the same was paid by plaintiff's assignor as and for taxes levied on the lands in the petition described for the year 1861, during which year, as claimed by defendant, said lands were under and by the legal effect of the joint resolution of Congress of March 2, 1861, entitled "A joint resolution to quiet title of lands in the State of Iowa," purchased by defendant's grantor of the State of Iowa, and were therefore for that year exempt from taxation under the statutes of said State of Iowa, and that our decision was and is that the defendant's said grantor did not under and by the legal effect of said joint resolution become a purchaser of said lands on said March 2, 1861, and therefore was and is against the immunity so claimed.

And it is further certified and ordered to be made part of the record herein that on the hearing of said cause the defendant claimed that this court had not jurisdiction to hear and determine the same, because, as was claimed, under and by virtue of the provisions of the act of Congress of March 3, 1875, for the removal of causes from State to Federal courts, by the petition, bond, and other proceedings of defendant for removal filed and had in the circuit court of Webster county, Iowa, from which the same came by appeal to this court, the same was removed from said circuit court to the United

26 States court for the district of Iowa, central division. That our decision herein was and is that said cause was not thereby removed, and, under the provisions of said act of Congress, was not thereby removable, and that this court had jurisdiction thereof to hear and determine the same on such appeal, and therefore was and is against the immunity so claimed.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

27 It is hereby agreed that the foregoing, together with pages from 8 to 37½, both inclusive, in the case of Edward H. Litchfield, executor of Edwin C. Litchfield, deceased, plaintiff in error, *vs.* George Crane, administrator of Edward K. Goodnow, deceased, defendant in error, No. 670, constitutes the entire record herein and that the cause is to be submitted thereon.

It is further agreed that all the evidence contained in the agreed printed transcript of record in the above-named case shall be treated as part of the record in this case, as far as relevant and not including the amounts of taxes paid.

GEORGE CRANE,
Att'y for Def't in Error.
C. H. GATCH,
Att'y for Plaintiff in Error.

Endorsed on cover: Supreme Court U. S. 1887, October term. No. 671. Edward H. Litchfield, administrator, &c., pl'ff in error, *vs.* George Crane, administrator, &c. Agreed record.

Stamped: Office Supreme Court U. S. Filed Oct. 5, 1887. James H. McKenney, clerk.